



Sidebar Idaho Chapter Federal Bar Association Quarterly Newsletter

A MESSAGE FROM STEPHEN V. KENYON, CLERK OF COURT

PRIMER ON PRO BONO SERVICES IN FEDERAL COURT



Stephen V. Kenyon
Clerk of Court

In the District of Idaho, we have found that some attorneys are leery of accepting a case and want the Court to screen each matter to determine if the case has a viable claim. For

understandable reasons, attorneys may not want to take on a matter that is frivolous. Generally speaking, when a self-represented litigant seeks appointment of counsel with the Court, the filings are reviewed by the pro se law clerks. If it is found that the assistance of counsel could help the indigent party's case, then it is sent to the Pro Bono Program Liaison for a referral pursuant to General Order 310.

It is important to remember that the Courts can use limited purpose appointments, where counsel is appointed in a limited scope such as

for mediation or a settlement conference, discovery disputes, etc. The obvious benefit of limited use appointments is that the attorney has a definite limited scope of representation and can budget their time accordingly.

In 2015, attorneys spent over 1,800 hours on pro bono cases with the federal court and in 2016 over 1,100 hours were logged. In coordination with the local counties, and the Idaho Supreme Court, the court has offered a variety of CLE's to highlight to attorneys the importance of pro bono work. The court genuinely appreciates the lawyers that give their time to offer this valuable service to enhance the legal system that is so unique to our country.

For young lawyers beginning their career, providing pro bono assistance affords a unique opportunity to develop the skills necessary to become a successful attorney. Most lawyers find this work to be very personally rewarding. Indigent litigants don't have a lot of money to share, only gratitude for your time.

Every practicing attorney who has done pro bono work understands the satisfaction that often follows this service. The District Courts of Idaho are committed to assisting Idaho's attorneys who are willing to take on such cases. This process is being constantly

reviewed and improved. In order to review and improve we need feedback from the practitioners -- please let us know what works and what could use more refinement. What would be especially helpful would be your experiences from other federal courts, i.e., what processes and services were available for practitioners that participated in pro bono work in other districts.

When you do have pro bono issues, please don't hesitate to reach out. You can reach Keith Bryan, our pro bono coordinator at (208) 334-9067 or email him at keith_bryan@id.uscourts.gov.

FBA PRO BONO VETERANS & WILLS PROGRAM

Through the FBA National's encouragement, many chapters throughout the country participated in the new Wills for Veterans Day initiative, a pro bono project where Chapters provide will drafting and signing services to any veteran/servicemen and women in their local area.

The Idaho Chapter wholeheartedly supported the initiative and asked James Schaefer, a former veteran (now an Assistant United States Attorney) to serve as Chair. James

wholeheartedly undertook the organization of this project and serves as our Chapter's point-of-contact with National and local veterans' administrators.

Idaho's Wills for Veterans Clinic was held on Thursday, November 9th, coinciding with Veterans Day, which was November 11, 2018. Our Chapter worked closely with Joshua Bode, Veterans Justice Outreach Coordinator; Boise VA Medical Center; Idaho Volunteer Lawyers Program (IVLP); Concordia College of Law Faculty and Students, and all of our volunteer lawyers and paralegals.

Many chapters have already designated a liaison including James Schaefer from our Chapter: Broward County Chapter, Dayton Chapter, Eastern District of Michigan Chapter, Eastern District of New York Chapter, Massachusetts Chapter, Memphis/Mid-South Chapter, Minnesota Chapter, New Orleans Chapter, Northern District of Ohio Chapter, Northern District of West Virginia Chapter, San Antonio Chapter, and Tampa Bay Chapter.

We are looking forward to assisting our veterans in future endeavors, along with our sister chapters!

GOVERNMENT RELATIONS

Article III Judicial Vacancies by Bruce Moyer, Counsel for Government Relations and West Allen, Chair, Government Relations Committee



The number of Article III judicial vacancies held relatively constant in the last month, declining by only one district judgeship, as reported on the Federal Judiciary [website](#). Three more Trump judicial nominees were confirmed, all district court appointments.

The following judicial candidates were confirmed by the Senate:

- Gregory G. Katsas to the Circuit Court of Appeals for the District of Columbia (Nov. 28)

- Dabney Langhorne Friedrich to the District Court for the District of Columbia (Nov. 27)
- Donald C. Coggins, Jr. to South Carolina District (Nov. 16)

FEDERAL JUDICIAL VACANCIES		
Jurisdiction	Vacancies	Nominees
Court of Appeals	17	7
District Courts	119	34
U.S. Court of Intern'l Trade	2	0
U.S. Court of Federal Claims	6	3
Totals	144	47

SENATE CONFIRMATIONS OF TRUMP ARTICLE III NOMINEES	
Supreme Court	1
Courts of Appeal	9
District Courts	6
U.S. Court of International Trade	0
U.S. Court of Federal Claims	0
Total	16

The most important recent development involved the decision of Senate Judiciary Committee Chairman Chuck Grassley (R-IA) to hold a November 29 hearing on the nomination of two circuit nominees, before receiving the blue slips from the home state senators in the two states associated with the circuit seats. The move departed from Grassley's 2015 commitment to continue the practice of holding confirmation hearings only after blue slips were turned in. Grassley determined to move ahead and hold a hearing on Supreme Court Justice David Stras, nominated to the Eighth Circuit Court of Appeals, and Louisiana Solicitor General Kyle Duncan, nominated to the Fifth Circuit Court of Appeals. Neither Sens. Al Franken (D-MN) nor John Kennedy (R-LA) had returned blue slips for Stras or Duncan. A third appellate court candidate, federal prosecutor Ryan Bounds, has had his nomination sidetracked by lack of blue slips

from Sens. Ron Wyden and Jeff Merkley, both Oregon Democrats.

Chairman Grassley said he intended to "maintain the blue slip courtesy," for district court nominations but reserved the right to override it for appeals court nominations, as he deems appropriate. In explaining his move during a [Senate floor speech](#), Chairman Grassley said: "I won't allow the White House to just steamroll home-state senators. But, as I've said all along, I won't allow the blue slip process to be abused," said Grassley, who pledged in 2015 to maintain the tradition as judiciary committee chairman. "I won't allow senators to prevent a Committee hearing for political or ideological reasons. Using the blue slip for these purposes is not consistent with historical practice."

The American Bar Association's evaluation process for evaluating judicial nominees was the subject of a November 15 hearing of the Senate Judiciary Committee. Republicans convened the hearing to study a not-qualified rating that the ABA gave last month to Steven Grasz, an attorney whom President Trump has tapped for an open seat on the U.S. Court of Appeals for the Eighth Circuit.

During the hearing, Sen. Ted Cruz (R-TX) pressed Pamela Bresnahan, the chair of the ABA's standing committee on the federal judiciary, on how the ABA can be seen as a fair evaluator of judges when it has publicly taken liberal positions on abortion and gun rights. "The ABA today is an openly liberal advocacy group," Cruz said. "And it's entitled to be, we have conservative advocacy groups, we have liberal advocacy groups. Groups are entitled to advocate their political positions. But if an advocacy group is pressing for a specific, desired outcome they should not be treated as a fair or impartial arbiter of merit." Bresnahan insisted that the standing committee reaches its conclusion based on lengthy interviews with people who know the nominees best and said the valuator's personal convictions do not enter the process.

Funding for the Federal Judiciary

Congress passed another Continuing Resolution (CR) on December 8 to keep the

federal courts and the rest of the federal government running and avert a shutdown. The new CR extends government funding at last year's levels through December 22. Congressional lawmakers continue negotiations on the FY18 funding package, and a third CR extended into early 2018.

Congressional leaders have indicated that they need more time to reach agreement on the sequester caps and other provisions that will create the framework for a two-year budget agreement and omnibus FY18 spending measure. Funding for the Federal Courts is expected to be included in the final spending bill at about the \$7.0 billion mark.

Nationwide Injunctions by District Courts

The House Judiciary Subcommittee on Courts, Intellectual Property and the Internet on November 30 held a [hearing](#) on the role of nationwide injunctions by district courts. The hearing was motivated by White House and Republican lawmaker concerns about the imposition in recent months of nationwide injunctions by district court judges on federal policies, including President Trump's immigration policies and travel bans on people from Muslim-majority countries. Video archive of the House hearing and the testimony of the four hearing witnesses is [here](#).

In a [November speech](#) to the Heritage Foundation, Attorney General Jeff Sessions said nationwide injunctions make judges "super-legislators for the entire United States." "A single judge's decision to enjoin the entire federal government from acting is an extreme step, and all too often, district courts are doing it without following the law." He criticized a Hawaii federal judge who blocked Trump executive order barring people from entering the United States from six Muslim majority countries, asking how "a judge sitting on an island in the Pacific" could do such a thing.

FBA'S MENTORSHIP PROGRAM

by Professor Katie Ball

The Federal Bar Association has developed a new program to help create meaningful bonds between FBA professional members and the University of Idaho College of Law student members to help students focus on the transition from law school to professional life.



We are hoping each member will consider committing to mentor an Idaho Chapter law student division member. As part of your commitment, you will be asked to mentor a student for six months (from October/November to April/May), which consists mostly of talking and/or meeting with the student at least once per month. Reasons to sign up to mentor a law student include that you may:

- gain a renewed enthusiasm for our profession;
- enhance skills in coaching, counseling, listening, and leadership;
- develop and practice a personal style of leadership;
- grow organizational recognition;
- obtain a greater understanding of the law student experience;
- share experiences, knowledge, and expertise;
- increase personal growth and satisfaction; and
- give back to the FBA and our Idaho Chapter

Professor Katie Ball, the Chair of this endeavor can provide information about the program and mentorship commitment. If you are interested in helping our Chapter with this mentorship program, please email Katie at ktball@uidaho.edu and let her know you are willing to serve as a mentor by passing along the best professional values and skills to the next generation of lawyers in our community.

Finally, our Chapter has law student members in both Moscow and Boise and with technology, a mentor can be located in any geographic region and still supervise a student studying in either Moscow or

Boise. Please let Katie know if you have a preference for the location of your mentee.

UNIVERSITY OF IDAHO LAW STUDENT DIVISION

by Aaron Bell, Vice-President and Events Coordinator

The University of Idaho chapter of the Federal Bar Association's Law Student Division hosted a Breakfast with the Bench event on Monday, October 16, 2017. Chief U.S.

Magistrate Judge Ronald E. Bush joined the students in Moscow and spoke about his experiences as both a state and federal judge. He shared how the dockets differ, and what we should expect when advocating in court. Judge Bush also shared his experience regarding working with law clerks, both career and term, and assured us that, as students of a law school that has a long history of educating excellent attorneys, we are capable of rising to the daunting tasks we will face throughout our careers as officers of the law. Before Judge Bush ended his presentation, he imparted a message he gives to new members of the bar — we attorneys have an obligation to rebuild the public trust in the legal profession through collaboration, rather than contentious discourse. Nearly forty students attended the event.



Chief U.S. Magistrate Judge Ronald E. Bush
District of Idaho

TRI-STATE CONFERENCE HELD IN JACKSON, WYOMING



The Wyoming Chapter of the Federal Bar Association hosted this year's 13th annual Tri-State Conference in Jackson, Wyoming at Spring Creek Ranch. The Tri-State Conference consists of federal judges and practitioners from Utah, Wyoming and Idaho, where issues of common interest affecting the west are discussed. The Tri-State provides extensive opportunities to mingle in an informal setting with members of the judiciary and other practitioners from the intermountain west during the Thursday evening reception and throughout the day and a half conference.

This year's conference began with a stellar program "The Fate of Public Lands," with presentations by Wyoming former Governor Dave Freudenthal, who was also the former United States Attorney (Wyoming), and John Leshy, Harry D. Sunderland Distinguished Professor of Law Emeritus, University of California, Hastings College of Law, who also served as Solicitor, U.S. Department of the Interior.

Governor Freudenthal and Professor Leshy were the first speakers on Friday morning discussing the prospects for transfer of federal lands to the states. They agreed that transfer is not going anywhere right now. However, there was a lot of discussion about giving states more control over the management of some amount of federal land. Considerations like cost and whether the states would serve the interests of the federal government were mentioned; and they indicated exchanges of land will continue to play a role. The duo also discussed the sage grouse and the likelihood of an Endangered Species Act listing, where they indicated the current process to revise once again the western resource management plans is likely to take years, noting that there hasn't been much change recommended. To date, there has been no response to the recommendations from the White House.

The Conference continued with a program simply titled "Cybersecurity," which was all encompassing led by Ovie Carroll, Director of the Department of Justice Cybercrime Lab, Washington, D.C. Mr. Carroll specializes in computer and intellectual property crimes. Mr. Carroll presented on digital forensics – which is all about the hunt for evidence in digital places that are hiding critical clues. While social media, the web, iPhones, Alexa, and other types of smart technology provide convenience, they can also be used to track people in ways never initially intended. The Department of Justice

is only beginning to utilize this digital investigative analysis. The magnitude of information found in our digital data and the potential uses of this data is both exciting and unnerving.

The lunch time presentation by Brad Nielson, formerly head of Shell's global litigation team, addressed how legal risk factors into decisions by major corporations regarding where to invest in new projects. The risk of delayed and increased project cost resulting from U.S. litigation may discourage international investment. Mr. Nielson advocated for lowering litigation costs in part by moving away from charging by the billable hour to value-based billing that better matches lawyer and client incentives.



Chief U.S. Magistrate Judge Kelly Rankin, and former Governor Dave Freudenthal (both Wyoming)

Another program of great interest was the program "Immigration Law Reform and Trends" led by Suzan Pritchett, Associate Professor and Director, Family and Immigration Justice Clinic, University of Wyoming College of Law; and Timothy Wheelwright, Esq., Durham Jones & Pinegar, Salt Lake City; Ogden, Utah.

The panelists discussed the current family-based and employment-based immigration systems and highlighted challenges within the current immigration regime including long outdated immigration caps. They concluded by noting trends in immigration enforcement, changing executive policies, and federal litigation that will characterize immigration practice and adjudication in the year to come.

The criminal practitioners thoroughly enjoyed United States Sentencing Commission Deputy Director Alan Dorhoffer's presentation. Mr. Dorhoffer sorted through a

variety of statistical data collected by the Sentencing Commission. With precision, he was able to compare the offense types for each of the districts and discuss how often the court was sentencing within the guideline ranges. Mr. Dorhoffer also pointed to and summarized a number of new Commission publications, and highlighted those concerning recidivism. All of the publications may be found on the Commission's website, www.ussc.gov. He wrapped up with a helpful summary of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and its profound effect on sentencing.

Senior District Judge Dee Benson, District of Utah, presented about his experiences as a member of the Foreign Intelligence

Surveillance Court (FISA). His presentation included information about the history that brought about the formulation of the Court, what the FISA Court does, and he provided an overview on the classified situation regarding Al Qaeda and other areas of current interest.

The last program of the day on Friday included Judges Dale Kimball (Utah), B. Lynn Winmill (Idaho), and Scott Skavdahl (Wyoming), led by moderator Adam Wright, Parsons Behle & Latimer (Utah), where the in § 1983 litigation. Specifically, they discussed the challenges of deciding qualified immunity

issues early in litigation without the need for significant discovery; whether the flexible approach to qualified immunity articulated by the Supreme Court in *Pearson v. Callahan* impedes the development of constitutional law; the increase of video evidence in § 1983 litigation and how that evidence has altered their approach to qualified immunity issues; and qualified immunity for non-law enforcement state actors.

The first presentation of the day on Saturday was Professor Sam Kalen, University of Wyoming College of Law, presented about the future of Chevron deference, highlighting recent Supreme Court decisions. He also discussed upcoming decisions in the next term and how the appointment of Justice Gorsuch may influence the demise of *Chevron*.

Bruce Moyer, FBA Counsel for Government Relations, provided an update on FBA

advocacy efforts in Washington and recent legislative developments in Congress. He devoted particular attention to the historically high numbers of vacancies on the federal bench, their impact and the current state of the judicial nomination and confirmation processes.

The conference concluded with the Chief Judge's panel, moderated by Judge Mark Carman (Wyoming). Serving on the panel were Chief Judge B. Lynn Winmill (Idaho), Chief Judge Nancy Freudenthal (Wyoming), Judge Dale Kimball (Utah), Chief U.S. Magistrate Judge Ronald Bush (Idaho), Chief U.S. Magistrate Judge Paul Warner (Utah), and Chief U.S. Magistrate Judge Kelly Rankin (Wyoming). The panel engaged in a lively discussion of the wide-ranging administrative responsibilities of chief judges, practice tips for arguing dispositive motions, and judges' procedures for handling discovery disputes, among other topics.

The Utah chapter will serve as host in 2018 in Park City, Utah on September 20-22, 2018. Mark your calendars and try to join us! If you have questions, feel free to contact Susie Headlee, Executive Director, Idaho Chapter at sheadlee@parsonsbehle.com.



Mark Jones, Clerk of Court (Utah); and
Chief U.S. District Judge B. Lynn Winmill (Idaho)



Lee Radford, Parsons Behle & Latimer; Teague Donahey,
Holland & Hart; Daniel Williams, Williams & Park; and
Chief U.S. Magistrate Ronald E. Bush (Idaho)



Teague Donahey; U.S. District Judge David C. Nye
(Idaho); and Lauren Scholnick, Strindberg & Scholnick



John Zarian, President, Idaho Chapter, FBA; Ryan
Nelson, Melaleuca, Inc.; and Norman Semanko, Parsons
Behle & Latimer

TOY BRIGADE WITH BOISE FIREFIGHTERS LADDER #149

We are delighted to report that our Chapter's partnership with Boise Firefighters Ladder #149 raising toys for needy and sick children was a huge success!!

Special thanks to our FBA sponsors Gjording & Fouser; Elam Burke; Ernie Hoidal (Hoidal Law); Bill Dryden (Elam Burke); and Parsons Behle & Latimer for their generous contributions of toys, books, and cash donations. We would like to especially recognize Patricia Trunnell, Parsons Behle & Latimer, as the idea was hers to partner with the Boise Firefighters, and Whitney Fouser, Gjording & Fouser, for assisting with coordination.

This is a very special program near and dear to our hearts, supporting sick or homeless children and their families in the city of Boise. Over 500 toys, games, teddy bears, etc. were collected during November and December! A week prior to Christmas, firefighters dressed up as Santa and his Merry Elf – and a team of fire fighters and FBA members drove around Boise on a very special fire engine, horns tooting, and personally delivering gifts, including toiletries and other personal items.



Dylan Eaton, Parsons Behle & Latimer;
and Craig Martin, Boise Firefighters #149



Santa and his elves worked all day making merry, handing out toys and gifts (and an occasional hug) to children at Ronald McDonald House, Saint Alphonsus, and St. Luke's MISTI pediatric unit. Through your generosity



and many others, we were also able to provide warm blankets and socks to adults at the St. Luke's adult oncology unit; and we were able to spend the afternoon with children at City Light Home for Women and Children, where Santa dispensed candy canes, toys and games for children of all ages, including several teens.

We hope this will become an annual Chapter event. If you are interested in participating in 2018, please contact Susie Headlee at sheadlee@parsonsbehle.com.



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PRO BONO LIAISON, Mary Hobson

SOLACE, AND MENTORSHIP
PROGRAMS
Katie Ball

2018 Idaho Chapter, FBA Members

**We are delighted to welcome
Loren Ipsen and Alex Semanko -- our newest Chapter members!!**

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